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18 Attorneys for Defendants New York Life Insurance
19 Company and New York Life Insurance and
20 Annuity Corporation

21 UNITED STATES DISTRICT COURT
22 NORTHERN DISTRICT OF CALIFORNIA

23 OLGA ORTMANN, as an individual
24 and on behalf of all others similarly
25 situated,

26 Plaintiff,

27 v.

28 NEW YORK LIFE INSURANCE
COMPANY, a corporation; NEW
YORK LIFE INSURANCE AND
ANNUITY CORPORATION, a
corporation; and DOES 1 through 20,
inclusive,

Defendants.

Case No. 3:07-CV-02506-WHA

**DEFENDANTS NEW YORK LIFE
INSURANCE COMPANY AND NEW
YORK LIFE INSURANCE AND
ANNUITY CORPORATION'S
NOTICE OF MOTION AND
MOTION TO DISMISS THE
EIGHTH, NINTH, TENTH AND
ELEVENTH CAUSES OF ACTION
IN PLAINTIFF'S COMPLAINT**

[FED. R. CIV. PROC. 12(b)(6)]

Judge: Hon. William Alsup
Date: July 5, 2007
Time: 8:00 a.m.
Courtroom: 9, 19th Floor

TO PLAINTIFF AND HER ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE THAT on July 5, 2007, at 8:00 a.m., or as soon thereafter as this matter may be heard by the Court, Defendants New York Life Insurance Company and New York Life Insurance and Annuity Corporation (“Defendants”) will and hereby do move to dismiss, the eighth, ninth, tenth, and eleventh causes of action in Plaintiff’s complaint pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure. This motion is based upon this notice, the accompanying memorandum of points and authorities, the proposed order, all pleadings and papers on file in this action, and such other matters as may be presented to the Court at the time of the hearing.

Dated: May 24, 2007

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By /s/ JILL A. PORCARO

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